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The Rule of Law in World Affairs

Daniel Patrick Moynihan

Together with the Triangle Universities Center for Advanced Study, the Academy founded the National Humanities Center in Research Triangle Park in North Carolina in 1978. On the occasion of the installation of Charles Blitzer, formerly Assistant Secretary of the Smithsonian Institution, as President and Director on April 23, 1983, Senator Daniel Patrick Moynihan gave the following address. It is reprinted here in part because of the close ties that have existed between the Center and the Academy, but also because Senator Moynihan's topic is one of inherent interest to many Academy members. A long-time Fellow and friend of the Academy, Daniel Patrick Moynihan has directed a number of Academy studies dealing with poverty in America and with racial, ethnic and religious conflict.

I take as my central theme today the proposition that a measure of the current disorientation in American foreign policy derives from our having abandoned, for all practical purposes, the concept that international relations (and also to a degree the internal conduct of governments) can and should be governed by a regime of public international law. Further, that this idea has not yet been succeeded by some other reasonably comprehensive and coherent notion as to the kind of world order we *do* seek, or which at all events we would accept and try to cope with.

I refer, in the first instance, to the vision associated in the American mind, primarily with President Woodrow Wilson. It is useful to keep in mind that no man in the history of the world—certainly none other in our century—so engaged the passions and the hopes of all of mankind as Wilson did in those months of 1918 and 1919.

The idea that a world ruled by law would be an ideal one—certainly a peaceful one—is as

References may be found in the original text.

old, almost, as the idea of law itself. But it was only with the latter part of the nineteenth century that it came to be seen as a practical vision and a reasonable choice that governments might make in determining their own behavior. It is probably fair to say that at the turn of the twentieth century most statesmen in the West expected such a future for the world. It was part of the prevailing optimism of the time and closely associated with the confident expectation that liberal democracy—with its great emphasis on law as the arbiter of relations among citizens with equal rights—would become a near-to-universal form of government.

There is a sense in which the first World War both shattered this vision and brought about its first practical fulfillment.

By “shattered,” I refer to the great collapse of confidence in ineluctable human progress that attended the onset of an all-but-forgotten violence, and on a scale never known. It was convulsion beyond the grasp of any merely political mind. William Butler Yeats went to the heart of it in his poem “The Second Coming,” a poem which haunts our minds to this moment, as some final, awful prophesy:

Things fall apart;
The centre cannot hold;
Mere anarchy is loosed upon the world,

But there was a political event as well: the establishment in Russia of the first totalitarian state with a government wholly rejecting Wilsonian beliefs and principles.

With the signing of the Covenant of the League of Nations in 1919, however, an altogether different vision seemingly came into being. True, the United States did not join the League; but the law as the arbiter of international relations was scarcely abandoned. The American government, with unsuspected vigor and unequalled confidence, set about drafting and obtaining ratification for treaties limiting arms and renouncing violence. The conviction that the United States *must* join the Permanent Court of International Justice persisted through Republican and Democratic adminis-

trations alike and for two decades engaged the energies of the leaders of the American bar.

It fell to Franklin D. Roosevelt, who had been Assistant Secretary of the Navy in the Wilson Administration during the first World War and had watched the collapse of Wilson's dream in Washington itself, to bring about successfully the establishment of a new world organization, the United Nations, at the end of the second World War. With that consummation in 1945 it seemed that a more experienced and perhaps more practical Wilsonianism was in place, its ideals somehow vindicated by the devastation of the war, which was seen to have been the consequence of the unwillingness of the democracies to insist upon and defend those ideals.

It seems so long ago. So remote, indeed, as to make it scarcely possible to invoke those days as a contemporary experience that makes any claim on our present behavior. Yet it is the case that at first we took our obligations under the Charter with profound seriousness—and expected others to do so as well.

In 1946, when the United States alone possessed the atomic bomb, we offered to turn it over to the United Nations for the purposes of maintaining world peace, which is to say to use the powers of government to obtain compliance with law. This was the famous “Baruch Plan.”

When, in 1950, North Korea invaded its neighbor to the South, the United Nations directed that the aggression be repulsed, and under United Nations banners this was done by an armed force made up of contingents from 14 countries. In 1956, when the Soviet Union sent its forces into Hungary, the General Assembly voted to

condemn the violation of the Charter . . . by the Union of Soviet Socialist Republics in depriving Hungary of its liberty and independence, and the Hungarian people of the exercise of their fundamental rights.

I would call attention to this reference to the “fundamental rights” of the Hungarian peo-

ple. For the Charter (or so I have argued) imposed a dual obligation on governments. They are to be law abiding in their relations with one another, *and also with their citizens*. The textual parallels with the United States Constitution are obvious and were deliberate.

The Constitution begins “We, the people of the United States. . .” The Charter begins “We, the peoples of the United Nations. . .”

The Charter commits governments to honor “fundamental human rights” as these were understood by British and American constitutional lawyers in 1944. Others understood this and made use of that understanding for their own purposes. In 1946, Spain applied for membership. Poland blocked its application, arguing that Spain was not a democracy, because it did not have free elections and was accordingly ineligible for membership until its internal arrangements were put in proper order.

The Charter of the Organization of American States (OAS) similarly presumes that member governments will be democratic in character. The OAS, of course, was the first of the regional organizations envisioned in the UN Charter to be established, and it modeled itself after that parent. The preamble, for instance, asserts that the nations of North and South America are

confident that the true significance of American solidarity and good neighborliness can only mean the consolidation on this continent, *within the framework of democratic institutions*, of a system of individual liberty and social justice based on respect for the essential rights of man.

Chapter II, wherein certain guiding principles are enunciated and reaffirmed, says:

The solidarity of the American States and the high aims which are sought through it require the political organization of those States on the basis of the *effective exercise of representative democracy*.

Again, all this seems far away.

What happened?

Simply put, the United Nations (which is

scarcely the whole of the matter, but which provides a structural setting in which the movement of events can most readily be seen) was not able to deal with totalitarian forces any more than was the League. Moreover, anti-democratic forces have managed to gain effective control of the UN. This is in sharp contrast to the experience of the League which, if impotent in the face of Fascist and Communist regimes, was at least never dominated by them. Germany, it will be recalled, left in 1933 over disarmament and Soviet Russia was expelled in 1939 over Finland.

The UN experience — and by extension the experience of this past generation — has also been shaped by, and in turn has helped to reinforce, the peculiar difficulties which the liberal democracies have found in dealing with rhetoric of the totalitarian left. It is useful to recall that there was at first some problem also in recognizing the realities of Fascism and Nazism — but only for a period: The purposes of the totalitarian right were too assertively illiberal. In contrast, the totalitarian left, by adopting and distorting the language of liberalism in the manner we have come to know as Orwellian, has blunted the perceptions of the democracies — or rather, perceptions within the democracies. As a result, a huge transmutation of the role within the international order of an organization such as the United Nations could take place without any very clear recognition by government or even public opinion that anything unusual had occurred.

This was left, as it frequently is, to writers. As early as the 1950s, Hans J. Morgenthau was asserting the primacy of national interests in the behavior of governments that seemed to leave little room for the normative considerations that are presumed embodied in law.

Then, with the Vietnam War, there came about a great falling off of confidence in those normative standards as such. Vietnam, as William Pfaff has written, was “liberalism’s war.” Opposition to it, very simply, brought

opposition to liberalism, or at least to the notion of its universal applicability, a notion implicit in the League and the UN and the OAS. Earlier, Reinhold Niebuhr had cautioned against too much presumption here, but now it positively was renounced. The most notable renunciation, perhaps, was that of George Kennan, in his 1976 interview with George Urban, published in the magazine *Encounter*:

My main reason for advocating a gradual and qualified withdrawal from far-flung foreign involvements is that we have nothing to teach the world. We have to confess that we have not got the answers to the problems of human society in the modern age. Moreover, every society has specific qualities of its own that we in America do not understand very well; therefore I don't want to see us put in a position of taking responsibility for the affairs of people we do not comprehend.

In sum: Wilsonian thinking has gotten us into sufficient trouble; it may get us into worse trouble. Perhaps this is not too great an oversimplification of Professor Kennan's thesis. It is a view increasingly shared in the United States.

The Chicago Council on Foreign Relations published recently the results of a nationwide survey of Americans' attitudes regarding this nation's role in the world. The results indicate

continuing erosion of the post-World War II public consensus that the national interest requires active participation by the United States in world affairs. Only a bare majority of the public now holds the opinion that such international activism is best for the future of the country while over a third now say that it would be better if the United States "stayed out" of world affairs.

This is in part, of course, a function of a currently renascent economic nationalism born of hard times which suggests that American prosperity will be enhanced if only we can establish a bit of distance between our own and the world's economy. It derives also, I submit, from wide acceptance of Kennan's thesis that the United States of America is

more of an aberration in the world than a model for the world. The "doctrine of American exceptionalism" (which in its earlier manifestations, in the writings of such as Thomas Paine, Alexis de Tocqueville and Walt Whitman, was thought to be beneficent and providential; to express, in Daniel Bell's words, "a well-nigh universal expectation that the United States would inherit the future") has apparently come more recently to mean that the American experience is irrelevant or unnecessary to others in the world.

You may recall President Reagan's address to the British Parliament last June in which he unveiled his administration's intention to sponsor a program fostering democratic institutions around the world; "Project Democracy," it is sometimes called. As interesting as the proposal was the response it elicited from some. Two days after the President's speech, the former Under Secretary of State, George W. Ball, widely and properly regarded as a genuine *eminence grise* in American diplomacy, remarked, "crusade for democracy . . . I thought we had gotten over that a long time ago."

I am afraid Mr. Ball may be right. We seem no longer to believe in the international application of the American tradition of democratic government and the rule of law. And if we don't, who will?

Thus, when in January 1979 the Security Council took up the matter of the Soviet-backed Vietnamese invasion of Cambodia, the Czechoslovak and Soviet representatives on the Security Council simply flat out denied there had been any such invasion, asserting there had been an internal uprising over which the Security Council had no jurisdiction. A straight-faced totalitarian lie, but altogether predictable. The Security Council, too, did what we *expected* it to do. A Soviet veto put an end to any prospect of censure in the Security Council. And in contrast to 1956, when the Soviets had invaded Hungary, there was no action by the General Assembly.

In December 1979, the Soviets invaded Afghanistan. This time there was a General

Assembly resolution passed, in January of 1980, though it didn't actually mention the Soviets by name. Rather, it called for the "immediate, unconditional and total withdrawal of the foreign troops from Afghanistan . . ." In three subsequent General Assembly resolutions (adopted in the Fall of 1980, 1981 and 1982), the words "unconditional and total" disappeared, while the Soviet Union continued unmentioned.

There are several things to learn from this. One is that nations denounce other nations from which they have nothing to fear. The United States, for instance, is routinely denounced as a threat to world peace in the declarations and communiques of the so-called Non-Aligned Countries; the Soviets are seldom mentioned, never condemned. If you would know who is feared, note who is not denounced.

The second is that the United Nations treatment of the Soviet invasion of Afghanistan not only does not surprise us, *but is expected*, even in our own country. For increasingly the United States responds to such violations of the Charter—and, by extension, of the regime of traditional international law on which the Charter was based—not at all in terms of law and legal obligations, but rather in terms of a narrow and almost normless *realpolitik*.

In my tenure as US Permanent Representative to the UN, Spanish Sahara was partitioned by Morocco and Mauritania, while Portuguese Timor was invaded and conquered by Indonesia. In both instances the United States was more than content that this should happen, while Soviet Russia, in the one instance, and the People's Republic of China, in the other, very much tried to prevent it. The notion of law no more entered our policy considerations than it did theirs.

The overrunning of Spanish Sahara was especially poignant for, a year earlier, the African nations, fearing Spain might not give up its colony, had called on the International Court of Justice for an advisory opinion which, delivered only weeks before the partition and

occupation of the territory by two African neighbors, ringingly asserted the right of the people of that colony to freedom and independence.

On a delicate subject, but surely an important one, may I note that I have served for more than six years on the Senate Select Committee on Intelligence and am now vice chairman. This period has seen two administrations, four Secretaries of State. We have dealt with a great range of concerns. The Committee, of course, or at minimum the chairman and vice chairman must be informed of all covert actions of the intelligence community. Now it is almost in the nature of covert operations that they are violative of treaty law: some treaty, signed somewhere, often in remote antiquity but a treaty still, and under Article VI of the Constitution "the supreme law of the land." Yet to my recollection, in six and more years of seemingly interminable closed hearings and briefings, I do not ever recall hearing a discussion of legal obligations of any kind.

To underscore what I said at the outset of these remarks: What concerns me most is that the United States has moved, and perhaps decisively, away from an earlier conception of a world order which if arguable was nonetheless coherent, and has not replaced it with any other conception. No normative conception, that is. If we don't believe in law, then what do we believe in? Put it another way: What do we expect?

Charles Blitzler has written, in *The Age of Kings*, that with the onset of the religious wars of the seventeenth century,

Once again, and for the last time, life was seen as meaningful in religious, even theological terms. . . .

Allowing for the somewhat aberrant appearance of Jimmy Carter and the Ayatollah Khomeini on the world scene, that seems a fair judgment. Are we passing through a similar transition at this time: from a belief in law to disbelief?

Are we resigned now to what Wordsworth

described in “Rob Roy’s Grave” as:

The good old rule
The simple plan
That they should take who have the power
And they should keep who can.

If not, then what? I say to you there is a void at the center of our thought which increasingly resonates in our behavior.

Woodrow Wilson himself once said that “The firm foundation of government is not pity but justice.” Such a view remains appropriate for a people committed to law, which ought to be understood not as a commitment never to use force, but to use force only as an instrument of law and in the defense of liberty.